

California Department of Fish and Game
Clarification Guidelines for
The Marine Life Protection Act
June 14, 2002

The California Department of Fish and Game (Department) has primary responsibility for the development of a Master Plan for Marine Protected Areas (MPAs) in order to implement the Marine Life Protection Act (MLPA or Act), enacted by the state Legislature in 1999. The following questions and answers review and provide clarification of specific provisions of the MLPA based on the Department's understanding of the legislation. This should help facilitate the plan's development through the Working Group process.

The document is organized into three main parts. The first provides a brief overview of the Act. The second identifies key questions and answers to help clarify the Act and its requirements. The final part provides an annotated table of contents to assist with finding various sections of the Act. The complete language of the Act is attached as an appendix (*to be provided in the MLPA Regional Working Group Notebooks*).

Part 1 - Overview

The Marine Life Protection Act (MLPA) was enacted in 1999 to strengthen the protection of California's coastal and ocean areas. The MLPA requires establishing a Marine Life Protection Program (Program) that provides clearly defined objectives, effective management measures, and adequate enforcement strategies for California's Marine Protected Areas (MPAs).

Over the past 50 years California established approximately 135 Marine Managed Areas (MMAs), of which 52 marine areas and 18 estuarine areas have specific fishing regulations and are therefore considered MPAs. However, there were concerns that the existing MPAs did not work as a system, that many sites lacked effective enforcement and monitoring, and that many MPAs lacked specific goals and objectives.

In 2000, the Marine Managed Areas Improvement Act (MMAIA) was enacted to simplify the existing classification system of the state's MPAs and MMAs and to complement the MLPA by ensuring that MPAs were better managed and designed. The Act defined a MPA as:

“A named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or

administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs).”

Section 1591 of the Fish and Game Code lists new MPA classifications established by the Marine Managed Areas Improvement Act (MMAIA). Those classifications are as follows: 1) State Marine Reserve (the equivalent of “Marine Life Reserve” in the MLPA), where commercial and recreational fishing are prohibited; allows for limited scientific collection of marine plants and animals by permit; 2) State Marine Park, which prohibits commercial harvesting; allows recreational fishing but may provide specific restrictions; allows scientific collection by permit; 3) State Marine Conservation Area, which limits commercial and/or recreational uses; and scientific collection by permit may be allowed.

The MLPA defines an MPA as a “named, discrete geographic marine or estuarine area seaward of the high tide line...together with its overlying water and associated flora and fauna that has been designated by law, administrative action, or voter initiative to protect or conserve marine life and habitat.” Breaking this down into its component parts, in order for an area to be considered an MPA it must have a specific name, a spatially defined area, and be intended to protect or conserve organisms and/or habitats.

The MLPA does not provide the Fish and Game Commission (Commission) with new authority to establish or modify MPAs. It refers specifically to authority already existing within the Commission to create MPAs. When the MLPA was enacted in 1999, the relevant authority permitted the Commission to establish “Ecological Reserves”, many of which had marine components. However, with the passage of the MMAIA, that authority has been modified to fit the new MPA naming system. The Commission may now designate, delete, or modify State Marine Reserves and State Marine Conservation Areas. This authority will be used to meet the requirements of the MLPA. The Act does provide the Commission with authority to regulate take within MPAs.

In addition to State Marine Reserves and State Marine Conservation Areas, the State Park and Recreation Commission may designate, delete, or modify State Marine Parks provided the Recreation Commission has the concurrence of the Fish and Game Commission. The Master Plan may include State Marine Parks as part of the proposed MPA network. This will allow the use of the full range of MPA classifications. Recommendations for State Marine Parks will be brought to the Park and Recreation Commission for adoption as well as the Fish and Game Commission for concurrence.

According to the Act, MPAs are to be designed and managed, to the extent possible, as a network. One Program goal is to protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems. Another is to help sustain, conserve, and protect marine life

populations, including those of economic value, and rebuild those that are depleted. The Program seeks to improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance and to manage these uses in a manner consistent with protecting biodiversity. The Program also seeks to protect marine natural heritage, including the protection of representative and unique marine life habitats in California waters for their intrinsic value

Part 2 - Questions and Answers

1) Why is California's existing array of MPAs being improved?

California's MPA system is being redesigned to increase its effectiveness in protecting marine life, habitat, and ecosystems. The purposes for creating MPAs are much broader than just providing another management tool to help sustain fisheries. The MLPA states that Marine Life Reserves (State Marine Reserves) are an essential element of the MPA system and identifies multiple purposes for MPAs in general:

- To protect diversity and abundance of marine life and the function of marine ecosystems.
- To help sustain marine populations, including those of economic importance, and rebuild depleted populations.
- To improve recreational and educational opportunities in areas subject to minimal human disturbance.
- To protect natural heritage including representing habitats for their intrinsic values.
- To ensure that MPAs have clearly defined objectives, effective management measures, adequate enforcement, and are based on sound scientific guidelines.
- To ensure that MPAs are designed and managed, to the extent possible, as a network.

There is increasing evidence of a wide range of benefits associated within MPAs including, increased numbers of species (biodiversity), increased individual size, higher reproductive potential, protection of stocks from depletion, and reducing human impacts on marine ecosystem structure and functioning. MPAs may also provide benefits beyond their boundaries, such as exporting larvae and "spillover" of adults to fishing areas.

A major benefit afforded to fisheries management through the use of MPAs is insurance against uncertainty. Many State managed stocks are considered to be in what are called "data poor situations", with little information available on stock size, population status, life history, and the magnitude of fishing mortality. This lack of information on basic life history and population status could lead to incorrect assumptions when making management decisions. Establishing MPAs

that protect a portion of these stocks could offer a buffer against uncertainties due to natural environmental fluctuations or the limited availability of biological information. MPAs are also useful areas to perform studies on basic life history of organisms and as comparison sites to determine natural versus human-caused effects on populations.

Environmental fluctuations also play a major role in affecting the reproductive success or failure of many marine species. Natural fluctuations, which negatively affect reproductive success, can limit the ability of stocks to sustain fishing. A network of MPAs could provide a buffer against sporadic reproductive failures due to environmental fluctuations by protecting a portion of those stocks from exploitation during those key periods.

The insurance provided by protecting a portion of populations within MPAs could also help sustain local marine populations and provide a reproductive source to assist with rebuilding depleted stocks. By reducing mortality rates within MPAs the average density, size, and age of previously fished species may increase. For many species, larger organisms are known to produce significantly more young, because the number of eggs produced by an individual increases dramatically with size.

Populations with relatively sedentary adults will be more likely to benefit from MPA protection. Production outside an MPA will primarily be due to larval export. In contrast, the density, size, age, and fecundity of relatively mobile species within an MPA will likely increase less compared with sedentary species because of their movement in and outside MPA boundaries.

2) What guidelines does the Act require when designing MPA networks?

The following guidelines taken directly from the act require certain things to be addressed when designing potential MPA networks:

- Individual MPAs are to have identified goals and objectives and may serve different purposes.
- MPAs within each region are to include the variety of marine habitat types and biological communities across the range of depths and environmental conditions found within that region.
- MPA systems within each region are to include MPAs that replicate, to the extent possible, similar types of marine habitats and biological communities.
- MPAs are to be designed, to the extent practicable, to ensure that activities that upset the natural ecological functions of the area are avoided.
- Individual MPAs and the MPA network are to be of adequate size, number, type of protection, and location to ensure that objectives are met

3) Does the MLPA limit the authority to establish new MPAs?

There is no authority within the MLPA authorizing the creation of MPAs, however this authority exists elsewhere. Section 2861(c) of the MLPA states that nothing restricts the Commission's existing authority to designate new MPAs prior to the completion of the Master Plan. When the MLPA was enacted in 1999, the relevant "existing authority" allowed the Commission to establish Ecological Reserves with marine components (Fish and Game Code Section 1580). The statute enacting the MMAIA in 2000 gave the Commission authority to create, modify, or delete State Marine Reserves and State Marine Conservation Areas (Fish and Game Code Section 1590). Thus the "existing authority" to establish MPAs now lies in Section 1590 which states that "The Commission may designate, delete, or modify...state marine (estuarine) reserves, and state marine (estuarine) conservation areas..."

The words "prior to the completion of the Master Plan" in Section 2861 cannot be construed as meaning that the MLPA supercedes Section 1590, for three reasons. First, unlike the straightforward language in Section 1590, there is nothing in the MLPA that simply states that the Commission may create MPAs—if the Legislature had intended to grant this authority it certainly could have done so, as it did in the way Section 2860 expressly grants authority to regulate fishing in MPAs.

Second, the MLPA only mandates the creation of a process for the establishment of MPAs but the procedural aspects guiding the creation of MPAs- including siting specific areas - are different from substantive authority to legally create them (e.g., the difference between a blueprint showing a design and a building permit giving permission to create that design). Finally, the MLPA and MMAIA are intended to work together. In summary, the authority to create new MPAs or modify or delete existing ones exists outside of provisions of the MLPA. The MLPA does not change this authority and primarily creates a process to develop a plan for a network of MPAs.

The term "improve" as used in Section 2853 (b) and "improved" as used in Section 2853(c)(1) does not limit the MLPA Program's process directed toward establishing new Marine Protected Areas. As noted above, the Commission has existing authority to establish new MPAs. The Marine Life Protection Program created by the MLPA is expressly charged with including as a program element a process "for the establishment, modification, or abolishment of existing MPAs or new MPAs established pursuant to this program..." [Fish and Game Code Section 2853(c)(5)].

This process was developed in the MMAIA and includes, among other items, the Fish and Game Commission and Park and Recreation Commission as designating authorities for MPAs. The Commission through its adoption of the

Master Plan must also adopt and implement "decisions regarding the siting of new MPAs..." [Fish and Game Code Section 2855(a)]. All subsequent references to "siting," then, refer to the siting of new MPAs or modifying existing ones [Fish and Game Code Section 2856(a)(2)(F), (G); 2857(a), (c)-(e)]. The Legislature's intent that the MLPA also address the creation of new MPAs was made clear in their statements regarding the Act's adoption (Conference Committee Report, 1999). In summary, "improved marine life reserve component," means that reserves will be added or expanded to meet the guidelines in the Act, while the Commission's existing authorities remain unchanged.

4) What does a network of MPAs mean?

The Marine Life Protection Program is charged with ensuring that MPAs "are designed and managed, to the extent possible, as a network" [Fish and Game Code Section 2853(b)(6)]. Although neither statute nor legislative history defines "network," the ordinary dictionary usage contemplates *interconnectedness* as a necessary characteristic of the term. The term "reserve network" has been defined as a group of reserves, which is designed to meet objectives that single reserves cannot achieve on their own (Roberts and Hawkins, 2000¹). In general this definition also requires some direct or indirect connection of MPAs through the dispersal of adult and/or larval organisms. In some cases, larval dispersal rates are not known and oceanography or ocean current patterns are combined with larval biology to help determine connectivity.

Networks, however, may differ in each region. The Act also requires that the network as a whole meet the various goals and guidelines set forth by the law and contemplates the adaptive management of that network [Fish and Game Code Section 2857(c)(5)]. In order to meet those goals, a strict interpretation of an ecological network across the entire State may not be possible. Biologically, there are separations between various oceanographic regions within the State forming what are known as "bioregions". Many species would not be expected to cross these bioregional separations. Within a single bioregion, however, a network as described above could be established. Thus, regionally, the concept of a network of MPAs is the desired goal.

5) What activities might be allowed in MPAs?

Recreational access and non-consumptive uses will generally be allowed in Marine Reserves. Under the MLPA, a Marine Reserve is defined as an MPA where all extractive activities, such as sport or commercial fishing, are prohibited (with the exception of the possibility of scientific collecting, under a specific permit and considered on a case-by-case basis) (Section 2852(d) Fish and Game Code). However, this definition also gives the Fish and Game

¹ Roberts, C.M. and J.P. Hawkins. 2000. Fully-protected marine reserves: a guide. WWF Endangered Seas Campaign, Washington, DC. 131 pp.

Commission the discretion, within the limits of existing authority, to additionally prohibit "other activities that upset the natural ecological functions of the area."

The question of whether a particular non-extractive activity can be prohibited in a given area would have to be made based on the facts of the specific situation. The Legislature's direction is that "to the extent feasible" an area "shall be open to the public for managed enjoyment and study" but shall also "be maintained to the extent practicable in an undisturbed and unpolluted state." The Department's position is that, except under special circumstances or conditions identified for a specific reserve, non-consumptive activities, including recreational diving, kayaking, boating, and wildlife viewing would be allowed in marine reserves unless such an activity is found to be inconsistent with the purpose of a specific reserve.

6) Will people and boats be able to enter MPAs, anchor in them, or transit through them?

The issue of anchoring and transit is an important one from both the point of ability to enjoy the ocean environment and particularly from the point of vessel safety. While the MMAIA does provide the ability to restrict activities "such as walking, swimming, boating, and diving" (Public Resources Code, Section 36710) in a State Marine Reserve it emphasizes that the area should remain open to the extent feasible. So long as these activities are consistent with the intended resource protection they will be allowed. The Department's intent is to allow non-consumptive activities in most State Marine Reserves. It is also important to allow transit through and anchoring in MPAs especially in emergencies and foul weather but also during normal conditions. Transit and anchoring will be allowed, unless incompatible with the intended resource protection, provided that fishing gear is not in use and stowed onboard.

7) Will certain types of fishing be allowed?

Fish and Game Code Section 2857 states that the preferred alternative may include MPAs that achieve "protection of habitat by prohibiting potentially damaging fishing practices or other activities that upset the natural ecological functions of the area". The specific activities that will be allowed in various MPAs will be addressed on a case-by-case basis, since each MPA is mandated to be managed individually with its own goals and objectives. Any proposed network of MPAs in the Master Plan may include State Marine Conservation Areas, which restrict the use of certain gear types or the harvest of particular species, or State Marine Parks that prohibit commercial fishing and may restrict recreational fishing. An example might be an MPA with the primary objective of protecting bottom habitats and species. In this case, surface fishing might be allowed, while fishing that impacts the bottom habitat or bottom fish would be prohibited. This addresses both habitat protection and the issue raised in Section 2857 (b)(2) that concerns the enhancement of particular species.

8) Where will funding come from?

The MLPA does require that the Master Plan include recommendations for funding MPA management activities. Funding could be provided from a variety of sources including commercial license and permit fees, sportfishing licenses and fees, the General Fund, and other fees, grants, taxes, or other funding sources. One suggestion has been to establish Marine Protected Area use fees that would be required to enter an MPA. Similar to public lands programs; these fees may function well for areas where multiple uses occur. Sportfishing license revenues can help fund the Program regardless of the general limitations on the use of such funds for sportfishing programs.

Upon enacting the MLPA, the Legislature declared that MPAs are necessary to maintain marine biological diversity, which is “a vital asset” and important to “ocean-dependent industry.” It was also because of the expansion of fishing activities to formerly inaccessible marine areas that once provided sources of new fish to nearby fisheries [Fish and Game Code Section 2851(b), (c)]. The enhancement of fishery resources in general is a stated goal [Fish and Game Code Section 2851(d), 2852(c), 2860] as is the enhancement of recreational opportunities in particular [Fish and Game Code Section 2851(f), 2853(b)(3)]. MPAs are intended to benefit recreational, as well as commercial fisheries, non-consumptive users and non-game species.

The law is clear that a portion of marine resource protection costs may be allocated to those who use and benefit from management of the marine fishery resources [Fish and Game Code Section 710.7(b)]. This reasonably includes not only recreational ocean anglers but also other extractive and non-extractive users who benefit from MPAs.

9) How will the Program be implemented? Is phasing of MPAs allowed?

As stated previously, the Legislature has yet to appropriate any funds for the implementation of the MLPA Program. Section 2859 (b) states that the Commission shall adopt a final Master Plan and a Marine Life Protection Program based on the plan and shall implement the Program, to the extent funds are available. The Program adopted by the Commission will not automatically create new MPAs or modify existing ones unless funds are available to do so. This includes funds for enforcement, research, monitoring, education, and signage.

The MLPA does suggest that new MPAs may be phased in, and the Department and Master Plan Team may recommend phasing. This could include regional phasing or phasing for portions of the preferred alternative throughout all regions and over time. The MLPA also expressly contemplates recommendations for

phasing in the preferred alternative under Section 2857(e). Phasing would also accommodate the implementation considerations mentioned above.

10) What is a Socioeconomic analysis?

Social and economic impacts of MPAs are a critical concern. These impacts include both the direct effects to income (such as commercial fishing) and indirect effects to the economy (such as through tourism and related purchases). Socially, the impacts could range from people being required to go farther to fish or an enhanced experience from visiting a more natural area. It is important to note that both social and economic impacts are positive for different user groups. Non-consumptive diving is an example of a group that tends to directly benefit from the establishment of MPAs.

Socioeconomic analysis of MPA alternatives will be part of the Master Plan development process. This is a requirement of both the MLPA and normal processes for regulatory implementation and environmental review. The exact form of this analysis and how long it will take has not been decided. At a minimum, outside experts will be used to help analyze various MPA options for their relative impacts.

11) Will MPAs help provide water quality protection?

Water quality protections for the marine environment are not a focus of the MLPA, but they are the focus of the numerous other State and Federal statutes and regulations. However, an area designated as an MPA may receive more water quality related consideration by appropriate agencies because of its MPA status. The MLPA works in conjunction with the MMAIA, which recognizes “State Water Quality Protection Area” as a category of Marine Managed Area [see Pub. Resources Code Section 36700(f)]. It is important to note that neither the Commission nor the Department has the authority to establish State Water Quality Protection Areas or regulate water quality. That authority rests with the State Water Resources Control Board. The existing 32 “Areas of Special Biological Significance” (which protect water quality) will be reclassified as State Water Quality Protection Areas as defined in the MMAIA.

12) How will the public be involved in the MLPA planning process?

The MLPA requires that the Master Plan be prepared with “the advice, assistance and involvement of participants in various fisheries, marine conservationists, marine scientists, and other interested parties”. In January 2002, the Department implemented a new process for engaging constituents in completing the Master Plan. In an effort to better address constituent concerns while fulfilling the requirements of the MLPA, regional Working Groups have been established to develop options for regional networks of MPAs and implementation recommendations for the Program. The Working Groups include

representatives from a wide variety of interests, including recreational and commercial fishing groups, environmental groups, ecotourism interests, harbor districts, scientists, research affiliates, and others. Regional workshops will occur in July to begin the new stakeholder process.

Scientists will be involved both through the activities of the Master Plan Team and through the inclusion of outside scientific experts. Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful preparation of a Master Plan depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. The Master Plan must take into account the best scientific information readily available at the time of preparation.

It is important to note that this does not require the development of new scientific information. If new information becomes available between the initial drafting of the Master Plan and its adoption by the Commission, this new information should be incorporated into the final Master Plan where practicable. Starting the Master Plan process over again would be unnecessary; unless the information indicates that drastic changes have occurred in the environment that might require revision of the MPA objectives or measures.

13) Is the MLPA Master Plan and Program subject to review under the California Environmental Quality Act (CEQA)?

The MLPA states that the Commission's adoption of the plan and a Program based on the plan shall not trigger an additional review under the California Environmental Quality Act (CEQA). While this indicates that an additional environmental review is not necessary upon adoption, it does not exempt the plan from CEQA review when it is first presented. The statement means that once an initial review under CEQA has been completed (at the time that the Department presents a draft Master Plan with regulations) the Commission's adoption of the Master Plan and Program will not require a subsequent CEQA review.

Part 3 - Marine Life Protection Act: Annotated Table of Contents

The following table of contents lists each section of the MLPA and briefly describes what those sections include. The MLPA is found in the Fish and Game Code, Chapter 10.5, Sections 2850 through 2863. It is attached to this document in its entirety as a reference.

Section 2850. Marine Life Protection Act

This section merely states the official name of Chapter 10.5.

Section 2851. Legislative Findings and Declarations

This section states the reasons the Legislature listed as a need to modify the existing collection of MPAs to ensure that they are designed and managed according to clear, conservation-based goals and guidelines that take full advantage their benefits.

Section 2852. Definitions

This section defines several key words or phrases used in the Act, including “Marine Protected Area” and “Marine Life Reserve”.

Section 2853. Redesign of MPA System: Goals and Elements

This section states the specific goals the Legislature requires the new “Marine Life Protection Program” (Program) to include. It also states that the Program may include various levels of protection with specific elements.

Section 2854. Report to the Legislature

This section refers to a report that was submitted by the State Interagency Marine Managed Areas Workgroup in 2000. The report contained the elements included in the MMAIA.

Section 2855. Master Plan for Adoption of Marine Life Protection Program

This section contains the requirement for the Department to prepare a Master Plan to implement the Marine Life Protection Program, the requirement to establish a Master Plan Team, and the composition of that Team. It also requires the Master Plan team to solicit information, including socioeconomic information, from interested parties to use in development of the plan.

Section 2856. Master Plan Preparation and Components

This section lists the required components of the Master Plan.

Section 2857. Department to Convene Workshops

This section states the requirement for the Department to convene siting workshops in July 2001. It requires the Department and Master Plan Team to develop a preferred alternative for siting. It also lists necessary components and guidelines for the preferred siting alternative, including an improved marine reserve component and the potential for phasing.

Section 2858. Peer Review of the Scientific Basis for Master Plan

This section states a requirement for the Department to establish a process for scientific peer review of the plan and that the process may be based on the Marine Life Management Act (separate legislation) peer review process (Fish and Game Code Section 7062).

Section 2859. Draft of Master Plan: Due Date and Review

This section lists the due dates of various drafts of the Master Plan and the final adoption date and requires public review of the draft. It also states that upon adoption by the Commission the Legislature's Joint Committee on Fisheries and Aquaculture will review the Master Plan.

Section 2860. Regulation of Commercial and Recreational Fishing or Taking of Marine Species in MPAs; Requirements for Adoption of New MPA

This section gives the Commission authority to regulate commercial and recreational fishing and other methods of take within MPAs and states that take is prohibited in Marine Life Reserves (now known as State Marine Reserves).

Section 2861. Review of Petitions to Add, Delete or Modify MPAs

This section requires the Commission to review petitions to add, delete, or modify MPAs yearly prior to the adoption of the Master Plan, and at least every three years after adoption. It specifically states that nothing in the Act restricts the Commission's existing authorities to change existing MPAs or add new MPAs.

Section 2862. Adverse Impacts in Analysis of Projects

This section states that the Department must highlight potential adverse impacts to marine life and habitats in MPAs when evaluating proposed projects and recommend measures to avoid or mitigate them.

Section 2863. Department to Confer with U.S. Navy

This section briefly states that the Department must confer with the Navy regarding issues related to Naval activities.